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# In the Supreme Court of the United States

OCTOBER TERM, 1978

No. **78-734**

KANSAS CITY AREA TRANSPORTATION  
AUTHORITY,  
*Petitioner,*

vs.

DIVISION 1287, AMALGAMATED TRANSIT  
UNION, AFL-CIO,  
*Respondent.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

Petitioner, Kansas City Area Transportation Authority, prays that a writ of certiorari be issued to review the decision in this case of the United States Court of Appeals for the Eighth Circuit.

**OPINIONS BELOW**

The unreported opinion of the United States District Court for the Western District of Missouri is reprinted at Appendix pp. A1-A24, *infra*. The opinion of the United States Court of Appeals for the Eighth Circuit, reported at 99 LRRM 2408, as corrected by unreported amendments dated September 21, 1978, is reprinted at Appendix pp. A25-A40, *infra*.

## JURISDICTION

The Opinion of the Court of Appeals was handed down and judgment was entered on August 21, 1978, and, on September 21, 1978, the Court of Appeals denied a timely petition for rehearing and suggestions for rehearing en banc. Apdx. A41, A42. Mandate was stayed on October 4, 1978, for an initial period of thirty days, pending the filing of this petition.

This Court has jurisdiction under 28 U.S.C. Sec. 1254(1).

## QUESTIONS PRESENTED

1. Whether there is Federal Question jurisdiction and an implied Federal cause of action over transit union claims of breach of contract by a local public body, simply because the contract was entered into for the purpose of receiving Federal subsidies, pursuant to Sec. 13(c) of the Urban Mass Transportation Act, when no Federal statute confers jurisdiction, no Federal Question presented by plaintiff was decided below, and the construction and validity of agreements between local transit unions and local public bodies is basically the concern of the States.

2. Whether the Opinion below is in conflict with controlling and sound opinions of this Court and the Courts of Appeal, setting forth conditions for implication of a Federal cause of action, and rejecting Federal Question jurisdiction, when (a) the controversy does not center on any dispute respecting the validity, construction or effect of any Federal law, (b) no resolution of any Federal Question is essential to the success or failure of the claim of plaintiff transit union, and (c) the new contract arbitration provision in controversy was not mandated by Federal law.

3. Whether the Opinion below erroneously declares important doctrines of Federal labor law, in construing an agreement in favor of compulsory arbitration of new labor contracts, and invoking the rule that Federal labor policy favors arbitration, when the Labor Board and Courts of Appeal have ruled that there is no Federal labor policy favoring arbitration of new labor contracts.

4. Whether the Opinion below erroneously decides important issues of Federal law, applicable to defenses of local transit authorities throughout the country, in ruling that the acceptance of Federal funds estops such public authorities from denying their statutory or common law power to delegate to a private arbitrator the making of new labor contracts for their employees, when (a) the Federal funding agency and the union complaining of breach of contract have expressly agreed in standardized contracts that local transit authorities remain subject to all existing legal limitations, including Federal, State and local law, and (b) a Congressional intent to override other laws is not supported by statutory language or legislative history.

## STATUTES INVOLVED

Petitioner questions the applicability of the following general grant of jurisdiction:

The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity. 28 U.S.C. Sec. 1331(a); 90 Stat. 2721.

No other statutory provisions were directly involved in the Opinion below. Pertinent to the background of the controversy are (1) Section 13(c) of the Urban Mass Transportation Act, 49 U.S.C. Sec. 1609(c); 78 Stat. 307 (Apdx. A44) and (2) the collective bargaining authorization of an amendment to the bi-state compact creating Kansas City Area Transportation Authority, Sec. 238.100, RSMo; K.S.A. Sec. 12-2534; 82 Stat. 338 (Apdx. A45).

### STATEMENT OF THE CASE

The Opinion below affirms a District Court order which would require Kansas City Area Transportation Authority (the Authority), a public body providing local transit service in Missouri and Kansas, to submit to arbitration the making of a new contract between the Authority and plaintiff (the Union), the bargaining representative of its employees.

The Union contends that compulsory arbitration of new contract terms ("interest arbitration") is provided by one term of certain agreements between the parties made in 1968 and 1973. The provision in question was included in these so-called "13(c) agreements" (named for Section 13(c) of the Urban Mass Transportation Act, 49 U.S.C. Sec. 1609(c)) in order to obtain Federal capital grants. Section 13(c) requires "protective arrangements" to prevent harm to employees who may be affected by the Federal grants.

The first Federal grant, in 1969, enabled the Authority to purchase the assets of privately-owned transit companies serving the Kansas City area; the second grant was for a headquarters building.

The Authority contended below that the interest arbitration provision of the 13(c) agreements, like all prior

and subsequent collective bargaining agreements between the parties, allows either party to serve a notice of termination, which results in the expiration of the interest arbitration option. The Authority further contends that it has no statutory or common law power to delegate the final making of a new labor contract to a private arbitrator.

In the absence of a provision of the Urban Mass Transportation Act or any other statute creating Federal Court jurisdiction over 13(c) agreements, the Authority contends that no Federal cause of action may be implied, and no Federal Question jurisdiction exists.

The Court below acknowledged that most Federal District Courts have held that "subject matter jurisdiction does not exist". Apdx. A31. Although acknowledging some doubt (Apdx. A35), the Court affirmed the District Court's ruling, accepting jurisdiction.<sup>1</sup>

The Opinion of the Court below construes the 13(c) agreement to provide compulsory arbitration of new contracts, apparently relying on "the federal policy in favor of arbitration as a means of settling labor disputes". Apdx. A39.

In response to the Authority's contention of "impermissible delegation of power", the Court below stated,

1. The identical jurisdictional question is now pending in a union appeal under submission since June, 1978, in the First Circuit (*Local Div. No. 714, Amalgamated Transit Union v. Greater Portland Transit District*, No. 78-1077). The same question is pending in another union appeal not yet argued in the Sixth Circuit (*Local Div. 1285, Amalgamated Transit Union v. Jackson Transit Authority*, No. 78-1185). On October 19, 1978, in an unreported decision the Court of Appeals for the Seventh Circuit, in *Local Div. 519, Amalgamated Transit Union v. LaCrosse Municipal Transit Utility*, No. 77-1981, ruled the jurisdictional issue consistently with the decisions below. In still another 1978 decision, where the parties had agreed on a contract pending litigation, and the case was declared moot, the jurisdictional issue presented by the union appeal was referred to as "without question, a thorny one." *Division 580, Amalgamated Transit Union v. Central New York Regional Transportation Authority*, 578 F.2d 29, 34 (2d Cir. 1978).

without citation of authority, that the acceptance of Federal funds makes the obligation to arbitrate "binding on the agency, regardless of general state law or policy". Apdx. A46. The 13(c) agreement, however, in widely-used language supplied by the International Union, provides that "In the event any provision of this agreement is held to be invalid or otherwise unenforceable under the Federal, State or local law, such provision shall be renegotiated", reserving the right of either party to "invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements". Apdx. 36, 234 (Record below). The 1969 Federal grant contract contains a similar provision: "Anything in the Grant Contract to the contrary notwithstanding, nothing in the Grant Contract shall require the Public Body to (take any action) in contravention of any applicable State or territorial law..." Apdx. 64 (Record below).

### REASONS FOR GRANTING THE WRIT

Important labor law issues and a patently erroneous estoppel of the Authority from complying with local law (and with Federal law pertaining to the authority of a bi-state agency) are presented by Questions 3 and 4 of this petition. These substantive issues alone could have significant nationwide impact, especially in the local transit industry, where similar agreements abound. There are hundreds of such agreements with local public bodies, throughout the country. Many of these agencies, like the petitioner, are already experiencing operating deficits exceeding \$10 million annually, largely attributable to labor costs. It is the petitioner's view that arbitration of new contracts, in which the decision-maker lacks budgetary responsibility, is one major cause of rising deficits.

As a matter of jurisdiction, an additional compelling need for review is presented by burgeoning litigation throughout the country, relating to Questions 1 and 2, where transit unions are asserting claims to Federal jurisdiction and a Federal cause of action based on so-called "13(c) agreements". The Opinion below, accepting jurisdiction, represented a concededly minority view when written, and serious "diversity of view in the lower courts" persists. See *Curtis v. Loether*, 415 U.S. 189, 191 (1974).

At an earlier stage of this litigation, the Union soundly advised the Court of Appeals that the issues presented in this case have truly "national importance".

With respect to the four questions presented, we combine consideration of the first two questions, and offer the following more particular reasons for this Court to grant the writ:

*Questions 1 and 2.* Section 13(c) of the Urban Mass Transportation Act requires local public bodies, as a condition for receiving Federal grants, to make protective arrangements so that Federal funding will not prove harmful to employee interests. 49 U.S.C. Sec. 1609(c); Apdx. A44. One purpose of the section was to preserve collective bargaining rights; it has been correctly ruled, however, that the statute does not require an "enhancement" of any union rights, such as would occur if a system of voluntary arbitration of new contract provisions were to be converted into a mandatory system, at the election of either party. *Division 580, Amalgamated Transit Union v. Central New York Regional Transportation Authority*, 556 F.2d 659, 662 (2d Cir. 1977).<sup>2</sup>

2. Protection of the status quo, as to employee benefits, was a minor theme in the legislation as a whole; the main purpose  
(Continued on following page)

While the statute expressly contemplates arrangements between the Federal funding agency and a local grantee, a practice has arisen under which "13(c) agreements" have been negotiated and executed between unions and the local public body.

There is no Federal statute, similar to the familiar statute pertaining to collective bargaining agreements of private employers (29 U.S.C. Sec. 185), creating Federal jurisdiction to construe or enforce 13(c) agreements between unions and local public bodies. When efforts have been attempted to invoke Federal jurisdiction, the Federal District Courts have almost always ruled that there is no Federal Question jurisdiction, and no other basis for invoking Federal jurisdiction. Claims of breach of provisions in 13(c) agreements are to be litigated in the State Courts, according to District Judges Gignoux (Maine), Wellford (Tennessee), Henderson (Georgia), Port (New York) and Bratcher (Kentucky), as cited in footnote 2 of the Opinion below. Apdx. A31-A32.<sup>3</sup>

Footnote continued—

was to provide Federal subsidies to save local transit operations, and permit increased service to meet public needs. Apdx. A27; 49 U.S.C. Secs. 1601 and 1602(a)(2). To the extent Section 13(c) may be construed to enhance union rights, contrary to its intent (as stated by the Second Circuit) and subsidies are eaten up in labor costs, the result so achieved frustrates the main objective of the legislation.

3. The only reported opinion so holding, in this rapidly developing area of litigation, is that of Judge Wellford, *Local Div. 1285, Amalgamated Transit Union v. Jackson Transit Authority*, 447 F.Supp. 88 (W.D. Tenn. 1977). The unreported authorities are cited in footnote 8, 447 F.Supp. at 94. The Wellford ruling is on appeal to the Sixth Circuit and the unreported Gignoux ruling has been under advisement in the First Circuit since June, as noted in footnote 1 of this petition. See also the one reported opinion consistent with the opinions below, *Local Div. 519, Amalgamated Transit Union v. LaCrosse Municipal Transit Utility*, 445 F. Supp. 798 (W.D. Wisc. 1978), affirmed October 19, 1978, in an unreported decision.

The Federal funding statute did not require union agreements with public bodies, but was a cause of the development and execution of the type of agreement here in question. It may be assumed *arguendo* that some of the provisions of a typical 13(c) agreement could conceivably be considered mandated by Federal law, as protective arrangements in grant contracts. No Federal court has ruled, however, that arbitration of new contract provisions is *mandated* by Federal law, in the absence of similar prior requirements in collective bargaining agreements. The Union erroneously asserts that such an enhancement of union rights is mandated, presumably to bootstrap itself into Federal jurisdiction. In any event, however, the statutory contention is not "an essential one" in the plaintiff's claim, does not spell the difference between victory and defeat, and is therefore insufficient to invoke Federal Question jurisdiction, under Justice Cardozo's landmark opinion in *Gully v. First Nat'l Bank*, 299 U.S. 109, 112 (1936). Unless the above Cardozo-formulated limitations on Federal Question jurisdiction are strictly observed, and only controversies which are basically Federal are subject to Federal jurisdiction, "we shall be lost in a maze". 299 U.S. at 118.

See also an earlier ruling of this Court that a suit does not arise under Federal law "unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends." *Shulthis v. McDougal*, 225 U.S. 561, 569 (1912).

In considering jurisdiction over agreements which have been submitted to Federal agencies for approval as to contents, Judge Friendly has held that there is no Federal Question jurisdiction unless the *specific* provision in litigation is *mandated* by Federal law. *McFaddin Express*,

*Inc. v. Adley Corp.*, 346 F.2d 424, 426-7 (2d Cir. 1965), cert. den., 381 U.S. 915 (1966). In light of the 1977 *Division 580* case, *supra*, and supporting legislative history, it cannot be legitimately contended that new contract arbitration is so mandated, certainly in the absence of a prior history of compulsory interest arbitration clauses (which is not claimed here).

As part of the jurisdictional defect, the absence of an implied Federal cause of action demonstrates that the Union has chosen the wrong court, under the principles of *Cort v. Ash*, 422 U.S. 66 (1975). Nothing could be more clearly a matter of primarily local concern than the labor relations of a local public body, and the meaning and validity of agreements entered into by such bodies. See *M.B. Guran Co., Inc. v. City of Akron*, 546 F.2d 201, 205 (6th Cir. 1976) holding that contracting procedures of local public bodies are "peculiarly a matter of concern to the state" even though a Federal assistance agreement in that case required an award to the lowest bidder (l.c. 203).

However viewed, the Opinion below, accepting Federal jurisdiction, is contrary to principled rulings of this Court and of the Courts of Appeal, and is an unsound departure from many Federal Court rulings on the specific, widely-litigated issue of jurisdiction over "13(c) agreements".<sup>4</sup>

Avoidance of further disruption of the collective bargaining processes in the local transit industry (and of confusion as to where controversies should be decided)

4. If review is sought in the companion *LaCrosse* case, *supra*, note 1, petitioner would also seek to present issues pertaining to the amount in controversy, which are somewhat obscured in the Opinion below, but are clearly presented in the unreported Seventh Circuit opinion. The issue ruled by the Seventh Circuit pertains to the Union's "economic interest in a new . . . contract apart from that of the members' interest". Opinion, page 17, in 77-1891 (7th Cir. 1978).

requires review by the Court, and reversal of the decision below.

*Question 3.* The Opinion below construes the 13(c) agreement language in question in favor of compulsory interest arbitration, even though the arbitration provision itself refers to an overriding right to take economic measures upon "expiration" of a collective bargaining agreement. Apdx. A38. The Court acknowledged that the collective bargaining agreements of the parties (before and after the 13(c) agreements) have uniformly allowed notices of termination, "under which either side could have avoided interest arbitration": Apdx. A7, A36. The Court's construction of the 13(c) agreement language to achieve a different result, in favor of compulsory interest arbitration, is explicable only if the courts were under some obligation to resolve all contract language uncertainty in favor of arbitration.

The Opinion acknowledges that it relies on the familiar "federal policy in favor of (grievance) arbitration". Apdx. A39. The Opinion has patently confused grievance arbitration (to keep labor peace under existing contracts) with interest arbitration (using an arbitrator as a *substitute for the collective bargaining processes* to arrive at new contract terms). The latter practice, as Justice Black once noted in a railroad context, is generally "bitterly opposed" by unions and management alike, and should obviously not be considered a Federally-favored general practice. *Detroit & Toledo Shore Line R. Co. v. United Transportation Union*, 396 U.S. 142, 148 (1969).<sup>5</sup>

5. Contrary to the Opinion of the Court of Appeals, Apdx. A39, we do not contend that interest arbitration agreements "will not be enforced by the courts". Rather, we have expressly stated, as the District Court noted, that "if private parties have unambiguously agreed to arbitration of new contrary terms, the agreement is normally enforceable". Apdx. A18.

The National Labor Relations Board has recently made clear that interest arbitration is not a favorite of the law, and that its relationship to grievance arbitration is confined to the fact that they "both have the terminology of arbitration." Decision of Administrative Law Judge in *Columbus Printing Pressmen & Assistants Union No. 252*, 219 NLRB 268, 280 (1975); enforced in *NLRB v. Columbus Printing Pressmen, etc.*, 543 F.2d 1161 (5th Cir. 1976). That case holds that grievance arbitration is a mandatory subject of bargaining but that interest or new contract arbitration is permissive only, and cannot be pressed to impasse.

The Second Circuit ruled, earlier this year, that "an interest arbitration provision of a collective bargaining agreement is void as contrary to public policy, insofar as it applies to nonmandatory subjects". *NLRB v. Sheet Metal Workers Int. Ass'n, Local Union No. 38*, 575 F.2d 394 (2d Cir. 1978). That decision holds that parties cannot become "locked" into such interest arbitration, as a means of resolving future labor conditions, at the end of all future contract periods. It is now established (except in the Eighth Circuit) that Federal labor policy generally favors collective bargaining rather than arbitration as a means of establishing wages and labor conditions.<sup>6</sup>

The Opinion of the Court, construing the 13(c) agreements in favor of compulsory interest arbitration, under a supposed Federal policy favoring such arbitration (but

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6. In the context of the transit system funding legislation here in question, not one word of Congressional debate suggests a policy in favor of interest arbitration; and in hearings leading to the legislation, Secretary of Labor Wirtz testified that it would not be "a step toward compulsory arbitration", which the Secretary stated, "I oppose very strongly". Hearings on H.R. 3881, Committee on Banking and Currency, House of Representatives, 88th Congress, 480-1 (1963).

contrary to co-existing collective bargaining agreements) was in conflict with sound authority, establishes false principles which will have a pernicious effect in labor relations, particularly in construing local transit company 13(c) agreements, and should be reviewed and reversed.

*Question 4.* The Authority contends that it has no power, as a public body, to delegate to a private arbitrator the final authority to make a new labor contract for its employees, thereby losing control of 75% of its annual expenses. The Federal government's first experiment with interest arbitration was in the postal legislation of 1970, six years after the legislation in question. 39 U.S.C. Sec. 1207.<sup>7</sup> Some states have authorized such arbitration for public employees, by statute. It has never been claimed in any other litigation that a public body, absent statutory authority, can abdicate a statutory duty to establish wages of public employees, or the duty to bargain with employees when such duty is imposed by statute. The statutes here allow collective bargaining, leading to substantive agreements as to employee wages and other employment conditions, as consented to by the Authority, but do *not* authorize interest arbitration. Sec. 238.100, RSMo; K.S.A. Sec. 12-2534; 82 Stat. 338. Apdx. A45.

No authority has been cited by the Union, or by either of the Courts below, which would empower the Authority to bind itself in advance to arbitration of new contract terms. Instead, the Court below ruled (Apdx. A40) that the obligation to arbitrate is binding because the Authority

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7. Insofar as there is any Federal policy regarding methods of resolving new contract impasses in the local transit industry, this Court decided, at the request of this Union, that public policy allows strikes. *Division 1287, Amalgamated Transit Union v. State of Missouri*, 374 U.S. 74 (1963).

accepted Federal funds, "regardless of general state law or policy."<sup>8</sup>

The theory that a local public body is estopped from future compliance with the limitations on its statutory power is novel and unsupported; moreover, the Union and the Federal funding agency have expressly provided by contract that the Authority shall remain bound by all applicable law, Federal, state or local, *the provisions of the 13(c) agreement notwithstanding*. Page 6, *supra*, Apdx. 36, 64, 234 (Record below).

There is nothing in the subsidizing legislation which shows an intent to override local law. Senator Morse, the leading spokesman for the protective labor amendment, stated, for example, "The amendment does not supersede any State policy." 109 Cong. Rec. 5673 (April 4, 1963). See also 109 Cong. Rec. 5421-4, statements of Senators Harrison Williams, Javits and Sparkman, all noting a purpose to avoid overriding local law. The 13(c) agreements and funding agency contracts, expressly subordinating the agreements to local law, are thus properly designed to carry out the legislative intent to avoid preemption.

The Opinion below, estopping the Authority from adhering to legal principles against delegation of authority, is an unwarranted construction Federalizing labor relations in the local transit industry, and should be reviewed and reversed.

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8. State law and Federal law are similar, in holding that grants of power will not be loosely inferred, but "must be indicated by express terms or by clear implication." *Jacobson v. Tahoe Regional Planning Agency*, 566 F.2d 1353, 1358, note 7 (9th Cir. 1977), cert. gr., June 5, 1978 in No. 77-1327.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 1, 1978

**APPENDIX**

IN THE  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

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No. 77-0840-CV-W-1

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DIVISION 1287, AMALGAMATED  
TRANSIT UNION, AFL-CIO,  
Plaintiff,

vs.

KANSAS CITY AREA TRANSPORTATION  
AUTHORITY,  
Defendant.

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**MEMORANDUM OPINION, FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

(Filed February 28, 1978)

**I**

This is an action to compel arbitration of a labor dispute brought by Division 1287, Amalgamated Transit Union, AFL-CIO (hereinafter "Union"), against the Kansas City Area Transportation Authority (hereinafter "KCATA"). Under the agreed expedited pretrial and trial procedures, which have been complied with by counsel in an exemplary manner, the Court is able to rule defendant KCATA's motion to dismiss the Union's first amended

complaint and the merits of the Union's prayer for a permanent injunction at the same time. We find and conclude that defendant KCATA's motion to dismiss should be denied and that the Union is entitled to appropriate relief on the merits.

## II.

KCATA's motion to dismiss is grounded primarily upon this Court's alleged "lack of jurisdiction over the subject matter." That motion is also based upon additional grounds which are defenses on the merits requiring consideration of matters outside the complaint.\* *Gully v. First National Bank*, 299 U.S. 109, 113 (1936), and its progeny require that the question of whether "the matter in controversy . . . arises under . . . the laws of the United States" within the meaning of 28 U.S.C. § 1331(a), must be determined by looking solely to the allegations of the complaint. Therefore, we will defer discussion of the non-jurisdictional grounds of the motion to dismiss until we reach the merits.

We find and conclude that we have jurisdiction over the subject matter of this suit, basing our conclusion on the opinion of the Honorable James E. Doyle in *Local Division 519, Amalgamated Transit Union v. The La Crosse Municipal Transit Utility and The City of La Crosse, Wisconsin*, No. 77-C-292 (W.D. Wis., Jan. 27, 1978). Judge Doyle, facing the precise jurisdictional question presented in this case, found that he had jurisdiction to consider the merits of the Union's claim. We expressly adopt his reasoning by reference.

The Court recognizes the division of authority among the district courts which have considered the jurisdictional

\*For example, KCATA's claim that "the contract sued upon, fairly construed, does not provide for mandatory interest arbitration."

issue presented in this case.\*\* We agree with Judge Doyle's discussion of the cases which have reached a contrary conclusion. The courts which have denied federal jurisdiction did not have the benefit of Judge Doyle's carefully reasoned opinion.

Nor did they have the benefit of the order entered by the Court of Appeals for the Seventh Circuit on February 14, 1978, in connection with the appeal pending in the *La Crosse* case. The Seventh Circuit, after finding that the defendant-appellants had failed to establish appropriate grounds to warrant a stay of the preliminary injunction, stated that "the defendants-appellants must now proceed to arbitration" and ordered that "defendant-appellants' MOTION FOR STAY PENDING APPEAL is hereby DENIED."

We therefore reject the jurisdictional ground upon which defendant KCATA's motion to dismiss is based by our acceptance and application of the principles stated in *La Crosse*. The findings of fact and conclusions of law made on the merits are dispositive of the remainder of the grounds stated in KCATA's motion to dismiss.

## III.

The parties in this case were afforded a full and fair opportunity to adduce any and all evidence which either side deemed relevant and material. Following agreed pro-

\*\*See, e.g., *Local No. 714, Amalgamated Transit Union v. Greater Portland Transit Dist.*, No. 77-54-SD (D. Maine, Jan. 11, 1978). Defendant KCATA also relies upon, e.g., *Division 580, Amalgamated Transit Union v. Central New York Regional Transp. Auth.*, No. 77-CV-45 (N.D. N.Y. Dec. 19, 1977) appeal pending; *Metropolitan Atlanta Rapid Transit Auth. v. Local Division No. 732, Amalgamated Transit Union*, No. 18492 (N.D. Ga. July 11, 1973); *Local Division 1285 v. Jackson Transit Auth.*, No. C-78-104-E (W.D. Tenn. Dec. 23, 1977).

cedures, they then submitted proposed findings of facts and thereafter stated in a later filing whether they admitted or denied the proposed findings submitted by the other party.

As the massive stipulations of fact executed by the parties demonstrate, there are few, if any, substantial disputes in regard to any of the factual circumstances of this case. The parties do disagree, of course, concerning whether particular undisputed factual circumstances are relevant and material, but those disputes present questions of law rather than questions of fact.

The only areas of possible factual dispute would be those created by the testimony of the witnesses in regard to the meaning of the collective bargaining agreements negotiated by the parties. Both parties, however, objected and continue to object to oral testimony which would attempt to vary the plain meaning of the arbitration clause in the contracts entered into by the parties. As our findings of fact demonstrate, we have concluded that the objections of both sides to such testimony, based on the parol evidence rule, are well taken and that we have not considered the testimony of any witness called by either side in support of any finding of fact as it may relate to the plain meaning of the arbitration clauses in the agreements involved in this case.

There is no necessity to resolve any apparent conflict in the testimony in regard to jurisdictional amount as it may relate to the individual employees. We need find only that such testimony is insufficient to establish "to a legal certainty" that the required \$10,000 is not in controversy. See *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938), most recently applied in *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 346 (1977). We find, however, that more than \$10,000

is in controversy in regard to the Union's interest and under the other undisputed factual circumstances of this case. In short, we agree with what Judge Doyle ruled in regard to the jurisdictional amount question presented in *La Crosse*.

Similarly, plaintiff's proposed findings concerning policies which the Union allegedly has followed since the enactment of the Urban Mass Transportation Act in 1964 or how those policies allegedly may have been specifically implemented in Erie, Pennsylvania, and Broome County, New York, are not relevant. We refuse to make the findings proposed by the plaintiff in that regard.

Defendant has requested that we make detailed findings concerning a wage study made by a KCATA official, the status of the parties' negotiations toward a new collective bargaining agreement, and the legislative history of the Urban Mass Transportation Act (UMTA). We refuse to make any of those proposed findings.

Although we have consistently urged the parties to continue their negotiations at the bargaining table, the Court does not have power or jurisdiction to make a finding of fact which would tend to justify the bargaining position taken by either KCATA or the Union. While we do not believe it is necessary to make any findings of fact in regard to the legislative history of the Act, we agree with and adopt Judge Doyle's analysis of the legislative history of the Act as stated in his *La Crosse* opinion.

Pursuant to Fed. R. Civ. Pro. 52(a), we make the following findings of fact in language proposed by counsel for either the Union or KCATA and which opposing counsel have admitted in their respective briefs to be accurate.

## IV. FINDINGS OF FACT

1. Plaintiff, Division 1287, Amalgamated Transit Union, is an unincorporated labor organization representing workers in the transit industry for the purposes of collective bargaining. [Court Exhibit 1, which is the Stipulation of Facts between the parties (hereinafter "Ct. Exh. 1") ¶1].

2. Leroy Kent is the current President of the Union and has served as President at all times relevant to this litigation. [Ct. Exh. 1, ¶1].

3. Defendant Kansas City Area Transportation Authority is a creation of an interstate compact and statutes adopted by the States of Kansas and Missouri and approved by Congress. [Ct. Exh. 1, ¶2].

4. KCATA operates a public transit system in the counties of Cass, Clay, Jackson, and Platte in Missouri and the counties of Johnson, Leavenworth, and Wyandotte in Kansas. [Ct. Exh. 1, ¶2].

5. L. C. Huffman is the Resident Manager of KCATA. [Ct. Exh. 1, ¶2].

6. The proposed budget of KCATA for 1978 is as set forth in Exhibit "A" of Court Exhibit 1. [Ct. Exh. 1, ¶2 and Exhibit "A"].

7. On December 29, 1977, announcement was made that a federal grant of \$5.2 million had been approved for operating expenses in 1977, payable to local communities which had advanced such funds during the year. [Ct. Ex. 1, ¶2].

8. Five hundred eight-two (582) persons employed by KCATA are members of and represented for purposes of collective bargaining by the Union. [Ct. Exh. 1, ¶3].

9. At all times since the creation of KCATA, the Union has been recognized by KCATA as the collective bargaining agency for a unit of employees consisting of certain but not all of its employees. [Ct. Exh. 1, ¶4].

10. Prior to the establishment of KCATA, transit service in the area now serviced by KCATA was provided by Kansas City Transit, Inc., (earlier named Kansas City Public Service Company), a privately owned and operated company. [Ct. Exh. 1, ¶5].

11. From 1943 to 1968, employees of Kansas City Transit, Inc., were represented by the Union for purposes of collective bargaining. [Ct. Exh. 1, ¶5].

12. Kansas City Transit, Inc., and its employees were subject to the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, including the provisions of § 7 of the Act, 29 U.S.C. § 157. [Ct. Exh. 1, ¶5].

13. Throughout this time, employee wages and employment conditions were governed by collective bargaining agreements negotiated by the Union leadership and the management of the system. [Ct. Exh. 1, ¶5].

14. The collective bargaining agreements contained a no-strike clause applicable to the contract period and provided a procedure whereby, if the contract was not terminated by one of the parties or if termination notices were withdrawn, both parties might agree to extend the agreement during bargaining and to resolve any remaining disputed new contract terms by submission to a panel of arbitrators for final and binding resolution of the disputed new contract terms ("interest arbitration"). [Ct. Exh. 1, ¶5].

15. During 1967, KCATA applied for a capital grant from the federal Urban Mass Transportation Administra-

tion under the Urban Mass Transportation Act, 49 U.S.C. § 1601 *et seq.* (hereinafter UMTA) to purchase the assets and services of the Kansas City Transit Company and nine smaller companies. [Ct. Exh. 1, ¶6].

16. Accordingly, the legislatures of Missouri and Kansas were considering amendments to the bi-state compact legislation that created the Authority. [Ct. Exh. 3, ¶5(a)-(d)].

17. During the legislative consideration of the Amendments, the International Union presented its proposals for new compact legislation through Earle W. Putnam, General Counsel of the Union since 1965. [Ct. Exh. 3, ¶5(a)-(d); Exhibits I, J, K-L].

18. The Union proposed that the legislative amendments to the compact legislation include a provision obliging KCATA to offer new contract arbitration in case of impasse in bargaining [Ct. Exh. 3, Exhibits I and J], but the Union agreed to withdraw its requests when representatives of the Authority represented that it would be politically unfeasible to obtain arbitration through legislation. [Ct. Exh. 3, Exhibits K & L].

19. The Authority did not state to the Union any substantive opposition to mandatory interest arbitration. [Ct. Exh. 3, Exhibit L].

20. Prior to September 30, 1968, General Counsel Putnam sent KCATA a draft of a proposed agreement under § 13(c) of UMTA (hereinafter the § 13(c) agreement). [Ct. Exh. 2, Exhibit C1].

21. Paragraph 4 of the first Putnam draft of a proposed § 13(c) agreement contains provisions relating to arbitration and, in the last proposed paragraph, to expiration of collective bargaining agreements. [Ct. Exh. 2, Exhibit C-1].

22. The first three paragraphs of Paragraph 4 of the first Putnam draft of the proposed § 13(c) agreement contain provisions relating in part to the arbitration of new contract terms. [Ct. Exh. 2, Exhibit C-1].

23. Section 9 of the collective bargaining agreement in effect in September, 1968, contains provisions relating to the arbitration of new contract terms. [Ct. Exh. 2, top document (unlettered)].

24. Section 9 of the last printed collective bargaining agreement between KCATA and the Union, executed March 21, 1974, contains provisions relating to the arbitration of new contract terms. [Ct. Exh. 3, Exhibit N].

25. The last proposed paragraph in paragraph 4 of the first Putnam draft (hereinafter referred to as the "Expiration Provision"), provides as follows: "Nothing in this paragraph shall be construed to enlarge or limit the right of either party to utilize, upon the expiration of any collective bargaining agreement, any economic measures that are not inconsistent with or in conflict with applicable law. [Ct. Exh. 2, Exh. C-1].

26. Section 4 of the collective bargaining agreement between KCATA and the Union, in effect in September, 1968, contained provisions for the termination of the agreement (unnumbered first paragraph) or for proposing changes in the agreement (unnumbered second paragraph). [Ct. Exh. 2, top document (unlettered)].

27. The aforesaid termination provision (as of 1968) provided that "all of the rights, privileges, duties and obligations hereunder of the respective parties hereto . . . shall cease and terminate at one moment before midnight on said October 31st, subject to full and faithful performance by each party of the agreements herein contained on its part to be performed up to and including such date." [Ct. Exh. 2, top document (unlettered)].

28. The aforesaid change provision (as of 1968) provided that where a notice of termination has not been given or has been withdrawn, changes may be made by agreement, "with final resort to arbitration as hereinafter provided . . . if that is necessary." [Ct. Exh. 2, top document (unlettered)].

29. P. S. Jenison, the Chief Executive Officer of KCATA, examined the draft and sent a memorandum to William Icenogle, Executive Director of KCATA, opining that mandatory interest arbitration might be a good idea, but his only concern was that the Union should waive any right to strike during an arbitration. [Ct. Exh. 2, Exhibits A1 & B1].

30. On September 30, 1968, P. S. Jenison submitted to William Icenogle comments on the proposed § 13(c) agreement submitted by the Union (first Putnam draft). [Ct. Exh. 2, Exhibit A1].

31. Commenting on paragraph 4 of the first Putnam draft, Jenison stated that "it might be a desirable policy for the Authority to establish compulsory arbitration after all reasonable efforts to negotiate an agreement have failed." [Ct. Exh. 2, Exhibit B1].

32. Commenting on paragraph 4 of the first Putnam draft, Jenison stated, "the third arbitrator should be from the 7-county area" and made additional procedural suggestions for such arbitration. [Ct. Exh. 2, Exhibit B1].

33. Commenting on paragraph 4 of the first Putnam draft, Jenison stated, "with the arbitration procedure prescribed, there should be, contemporaneously, the no-strike pledge." [Ct. Exhibit 2, Exh. B1].

34. The expiration provision of the first Putnam draft, in permitting "any economic measures that are not incon-

sistent with or in conflict with applicable law," referred to strikes. [Ct. Exh. 2, Exhibit C1].

35. The expiration provision of the first Putnam draft was checked for exclusion and marked "out" by someone at KCATA. [Ct. Exh. 2, Exh. C1, Exhibit 3, ¶4].

36. KCATA negotiators responded to the first Putnam draft with an unsigned KCATA draft. [Ct. Exh. 3, ¶4; Ct. Exh. 2, Exhibit Z].

37. The unsigned KCATA draft deleted the expiration provision of the first Putnam draft and also contained an express no-strike provision relating to the period of any arbitration that may occur. [Ct. Exh. 2, Exhibit Z, ¶4].

38. The first Putnam draft and the unsigned KCATA draft were reviewed and discussed in a meeting at the offices of the International Union in Washington, D.C. in October, 1968. [Ct. Exh. 1, ¶11A].

39. Attending the Washington conference were Union representatives Putnam, McCaffrey, and Kent.

40. Attending the Washington conference were KCATA representatives Icenogle, Barcus and Kansas City Transit, Inc., representatives Jenison and Lockwood.

41. The § 13(c) agreement, dated November 18, 1968, was approved and signed by KCATA and the Union [Ct. Exh. 1, Exhibit C].

42. The final 1968 § 13(c) agreement provides:

In the case of any labor dispute where collective bargaining does not result in agreement after all reasonable efforts to agree in good faith, the same may be submitted at the written request of either party to a board of arbitration composed of three (3) persons as hereinafter provided, one to be chosen by the Au-

thority, one to be chosen by the Union, and the two thus selected to select a third disinterested arbitrator; the findings of the majority of said board of arbitration shall be final and binding on the parties thereof; all contract conditions shall remain undisturbed and there shall be no lockouts, strikes, walkouts or interference with or interruption of service during the arbitration proceedings. . . .

The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, the adjustments of grievances, any claim, difference, or controversy arising out of or by virtue of any of the provisions of this agreement for the protection of employees affected by the Project.

Nothing in this paragraph (4) shall be construed to enlarge or limit the right of either party to utilize, upon the expiration of any collective bargaining agreement, any economic measures that are not inconsistent or in conflict with applicable law.

[Ct. Exh. 1, ¶8].

43. The 1968 § 13(c) agreement thereafter was certified by the Secretary of Labor. [Ct. Exh. 1, Exhibit D].

44. On January 10, 1969, KCATA and the United States of America entered into a capital grant contract of assistance for Project No. INT-UIG-6. The contract provided federal grants to KCATA for purposes of acquiring

the capital assets of ten companies in the Kansas City area transportation district. [Ct. Exh. 1, ¶9 and Exhibit D].

45. In February, 1969, KCATA took over the transit company operations and the employees became employees of KCATA. [Ct. Exh. 1, ¶10].

46. Since 1969, KCATA has also made repeated applications for funds under the UMTA. [Ct. Exh. 1, ¶11].

47. In 1972 the Union agreed twice to extend the terms of the 1968 § 13(c) agreement to other capital grants. Under those conditions, the Secretary of Labor certified that the Project met the requirements of § 13(c) of the UMTA. [Ct. Exh. 1, ¶11(a)].

48. In 1973 KCATA applied for a grant under UMTA to purchase a consolidated transit center. In April, 1973, the Union and KCATA concluded a new § 13(c) agreement. *Inter alia*, Paragraph 17 of the 1973 § 13(c) agreement contains language identical to the language of Paragraph 4 of the 1968 § 13(c) agreement. [Ct. Exh. 1, ¶11(b)].

49. In 1974 the Union agreed to extend the terms of the 1973 § 13(c) agreement to another capital grant. Under those conditions, the Secretary of Labor certified that the Project met the requirements of § 13(c) of the UMTA. [Ct. Exh. 1, ¶11(c)].

50. The National § 13(c) agreement was concluded between the Union and the American Public Transit Association in 1975. It applies only to operating grants.

51. In 1976 the KCATA applied for two grants for operating assistance under the UMTA. In both instances, the Union agreed to abide by the provisions of a uniform national § 13(c) agreement. In both instances, the Union's letter of agreement included the following statement:

It is understood and agreed that Local Union 1287's endorsement is not a waiver of its right under paragraph (17) of the April 24, 1973 § 13(c) agreement between the parties. The agreement of April 24, 1973 will remain in full force and effect, and paragraph (17) thereof will be included in the Addendum to the national agreement pursuant to paragraph (4) thereof.

[Ct. Exh. 1, ¶11(d)].

52. In March, 1977, the Union agreed to extend the provisions of the 1973 § 13(c) agreement, including the provision of Paragraph 17, to another capital grant. [Ct. Exh. 7, ¶11(e)].

53. As recently as September, 1977, the Union agreed to extend the provisions of the 1973 § 13(c) agreement, including the provision of Paragraph 17 to another capital grant. [Ct. Exh. 1, ¶11(f)].

54. In 1974 KCATA executed a grant contract with the United States for Project IT-03-0024 in the amount of \$7,761,850. [Ct. Exh. 2, Exhibit U].

55. The grant contract contained the following clause:

Sec. 5. *Labor Protection*—The Public Body agrees to undertake, carry out, and complete the Project under the terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the Project and meeting the requirements of Section 13 (c) of the Act.

These terms and conditions are specified in the letter of certification to the government from the Department of Labor dated April 2, 1974, which is incorporated herein by reference.

The Public Body and the Amalgamated Transit Union executed an agreement, dated April 24, 1973, which provides to members of the Union protections satisfying the requirements of Section 13(c) of the Act in connection with a Project to finance the construction of a terminal center and the purchase of related equipment.

Accordingly,

- a. The terms and conditions of the agreement executed April 24, 1973, shall be applicable to the instant Project;
- b. The term "Project" as used in the contract of April 24, 1973, shall be deemed to cover and refer to the Project presently pending; and
- c. Employees of the Authority, other than those represented by the Union, and employees of any other urban mass transportation carrier in the service area of the Project shall be afforded substantially the same levels of protection as are afforded to Union members under the April 24, 1973, agreement.

[Ct. Exh. 2, Exhibit U].

56. From 1969 to the present, the parties have resolved their collective bargaining for a new collective bargaining agreement through bargaining once, and twice through new contract arbitration, but never through a strike. [Ct. Exh. 1, ¶12-13].

57. On October 17, 1977, the Union presented KCATA with a demand for modification of the existing collective bargaining agreement, including requests for increased wages, pension, health insurance benefits, vacations, and sick leave.

58. In September, 1977 KCATA gave the Union a notice of termination of the prior collective bargaining agreement effective November 14, 1977. [Ct. Exh. 1, ¶15].

59. The prior collective bargaining agreement provided for a dues check-off. The present Union dues are \$12 per month for 582 active employees, amounting to \$83,808 per year.

60. During the negotiations, the parties were negotiating over a contract term of as much as three years.

61. We cannot find to a legal certainty that the items in dispute were not worth more than \$10,000 per employee for the reasonably predictable contract period.

62. During the month of November, 1977, the Union twice requested KCATA to submit to arbitration under the § 13(c) agreement. KCATA refused. [Ct. Exh. 1, ¶¶17, 18, 19, 20, and 21].

63. Arbitration under the § 13(c) agreements may be requested by either party, without limit to the bargaining positions at the time of impasse. [Ct. Exh. 1, Exhibit C].

64. This was the first time KCATA has ever refused to go to arbitration.

65. KCATA at one time determined to make immediate unilateral changes in the terms and conditions of employment of KCATA employees as follows:

- (a) the imposition of a three-day waiting period before employees in the office clerical unit may begin to use sick leave (other employees now being subject to such a three-day waiting period);
- (b) a \$90 per month cap or maximum on KCATA payments for hospitalization insurance;

(c) establishment of part-time classifications in the office clerical unit for new hires, consistent with the tentative agreement previously reached with the Union;

(d) elimination of the requirement that two employees be assigned to road-test buses;

(e) to require that employees work five days during a work week in order to qualify for overtime pay for work on the sixth day;

(f) elimination of the requirement that a job scheduled for Saturday and Sunday be filled during the Monday-Friday period when the regularly assigned employee is off work;

(g) to allow Fare Box Clerks to drive buses on KCATA property in order to accomplish their work, but for no other purpose;

(h) establishment of revised Extra Board rules;

(hh) institution of new mechanic trainee program; and

(i) reduction of benefit programs for employees hired after November 14, 1977, in accordance with tentative agreements previously reached with the Union:

(1) accumulation of one week's vacation after one year;

(2) change of formula for sick leave from one day per month to 1/4 day per month for the first year, 1/2 day per month for the second year, and 3/4 day per month for the third year;

and

(3) elimination of dependents' health insurance coverage during the first year and the addition

of a spouse only during the second year (not agreed to by Union).

[Ct. Exh. 3, Exhibit P].

66. All efforts to make the above proposed unilateral changes are being withheld by KCATA pending the decision of this Court.

67. On November 28, 1977, this action was filed by the Union, seeking enforcement of the UMTA, the Grant Contract, and the § 13(c) agreements as set forth above.

## V. CONCLUSIONS OF LAW

In stating our conclusions of law on the merits we need not reach many of the questions which the parties have discussed in the various briefs filed in this Court. Defendant recognizes in its proposed conclusion of law No. 19 that "if private parties have unambiguously agreed to arbitration of new contract terms, the agreement is normally enforceable. *Builders Association of Kansas City v. Greater Kansas City Laborers*, 326 F.2d 867 (8th Cir.), *cert. den.*, 377 U.S. 917 (1964)."

The arbitration clause agreed to by the parties in their § 13(c) agreements since 1968 in anticipation of obtaining millions upon millions of dollars of federal aid defines a "labor dispute" subject to arbitration as a term which:

"shall be broadly construed and [which] shall include any controversy concerning . . . the making or maintenance of collective bargaining agreements, the terms to be included in such agreements, . . . or controversy arising out of or by virtue of any of the provisions of this agreement for the protection of employees affected by the Project."

We find and conclude that the provisions of the § 13(c) agreements as they relate to the disputes subject to arbitration, when considered separately—as well as when considered in light of all other provisions of the § 13(c) agreements, and the history of the negotiations of the parties in reaching those agreements, *see Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n*, 532 F.2d 615, 623 (8th Cir. 1976), *aff'g* 409 F. Supp. 233 (W.D. Mo. 1976)—are clear and unambiguous. An unambiguous clause which specifies both parties' obligation to submit all disputes relating to the making and the terms to be included in a new collective bargaining agreement to arbitration upon demand of the other party may not be altered or varied by parole evidence. *See Builders Ass'n of Kansas City v. Greater Kansas City Laborers*, 217 F. Supp. 1 (W.D. Mo. 1963), *aff'd*, 326 F.2d 887 (8th Cir.), *cert. den.*, 377 U.S. 917 (1964).

We do not accept defendant's proposed conclusion of law No. 26, that "the construction of the 13(c) agreements sought by the Union would be beyond the powers granted the Commissioners of KCATA, and so construed, the 13(c) agreements would be illegal." We do not believe the cases relied upon by KCATA support its legal argument or that KCATA violated the law when it participated in arbitration proceedings in the past.

Defendant KCATA attempts to develop a sharp distinction between what it calls "grievance arbitration" and "interest" or "new contract arbitration." Its proposed conclusion of law No. 14 contains a good example of the argument that KCATA has attempted to establish throughout the pending litigation. Grievance arbitration is there referred to as being "highly favored and readily accepted"; conversely, new contract arbitration is described as being "extremely controversial and generally regarded as a

'stumbling block' to collective bargaining." Defendant KCATA argued generally that agreements containing grievance arbitration provisions should be enforced but that agreements for new contract arbitration should not. We do not accept this distinction.

We concluded in the *Builders Association* case, 213 F. Supp. at 435, that the Supreme Court's Steelworkers' trilogy and other familiar cases\*\*\* had undermined the rationale of the most well-known case upholding this distinction—Judge Wyzanski's opinion in *Boston Printing Pressmen's Union v. Potters Press*, 141 F. Supp. 553 (D. Mass. 1956), *aff'd*, 241 F.2d 787 (1st Cir.), *cert. den.*, 355 U.S. 817 (1957). The Court of Appeals, in affirming this Court's determination of *Builders Association*, expressly rejected defendant's renewed contention in the Court of Appeals that "the dispute in suit is not arbitrable because it concerns the creation of a new agreement." The Court of Appeals concluded that *Boston Printing Pressmen's Union v. Potter Press*, decided "several years before the Steelworkers cases were decided by the Supreme Court, . . . is far too weak a peg upon which to hang a reversal of the judgment in the instant case." 326 F.2d at 870.

Furthermore, we see no rational basis for distinguishing the *Builders Association* case from this case on the factual ground that in the former only some of the new contract provisions were to be sent to arbitration, whereas in this case the parties are not in binding contractual agreement on any of the provisions of a new contract.

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\*\*\*See *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957); *General Electric Co. v. Local 205*, 353 U.S. 547 (1957); *Goodall-Sanford v. United Textile Workers*, 353 U.S. 550 (1957); *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

Judge Sobeloff in *Winston-Salem Printing Press. & A.U. v. Piedmont Pub. Co.*, 493 F.2d 221 (4th Cir. 1968), expressly rejected the argument that "courts are precluded from commanding what has come to be known as 'interest' or 'prospective' or 'quasi-legislative' arbitration." That court noted that "no compelling reason for disregarding the specific provision to arbitrate a new contract . . . has been brought to our attention." Indeed, that court accurately pointed out that "nothing would be more out of step with our national labor policy than for courts to refuse to enforce a voluntary agreement to arbitrate differences."

We agree with the following analysis from *Winston-Salem Printing Press.*, 493 F.2d at 227:

A provision to arbitrate when agreement upon a new contract proves impossible, as is the case here, is part of an existing agreement and refusal to comply therewith constitutes a breach. This Court is not asked to determine the provisions of a new contract or to perform any nonjudicial function. The drawing of the new contract will be in the hands of an arbitrator where the parties chose to place the authority and responsibility. The court is asked to do no more than enforce a provision of an existing contract, a traditional judicial function.

Similarly, in *Chattanooga Mailers v. Chattanooga News-Free Press*, 524 F.2d 1304 (6th Cir. 1975), Judge McCree reviewed the more recent cases and concluded that "the enforcement of an interest arbitration clause is within the scope and purpose of our national labor policy, and the parties here clearly contemplated arbitration of new contract terms." See also *Nashville News, P.P.U. Loc. 50 v. Newspaper Print. Corp.*, 518 F.2d 351 (6th Cir. 1975).

We also agree with the conclusion of the Court of Appeals for the Fourth Circuit in *Winston-Salem Printing Press* that arbitration of new contract terms is practicable:

Although the point is not raised by the Company, some skeptics have suggested that the arbitration of new contracts is unrealistic and unworkable. Our research indicates that quite the opposite is the case. Arbitration of the terms of new contracts preceded the now commonplace grievance arbitration, Witte, Historical Survey of Labor Arbitration (1952), and has been successfully employed in the transit and printing industries for a substantial period of time. Kuhn, *Arbitration in Transit* (1952); Loft, *The Printing Trades* (1956).

493 F.2d at 227 n.10.

We find and conclude that the controlling federal labor policy applicable to the enforcement of voluntary arbitration agreements generally is equally applicable to the § 13(c) agreements involved in this case, particularly in light of the fact that such contracts were entered into for the express purpose of obtaining millions of dollars of federal aid. The § 13(c) agreements involved in this case unambiguously require the parties to arbitrate any dispute over the making or maintenance of collective bargaining agreements and the terms to be included in such agreements. This Court is required by applicable law to hold the parties to their agreement.

We find and conclude that application of the principles stated by this Court in *Builders Association of Kansas City* and in *Kansas City Royals* requires that plaintiff prevail on the merits and that the Union is entitled to appropriate equitable relief.

## VI.

For the reasons stated, it is

ORDERED (1) that defendant KCATA's motion to dismiss the Union's amended complaint should be and the same hereby is denied. It is further

ORDERED (2) that the parties shall maintain the status quo so far as this litigation is concerned. This order shall not be construed as a prohibition against the resumption of collective bargaining negotiations or the signing of a collective bargaining agreement. It is further

ORDERED (3) that counsel for plaintiff shall promptly prepare a form of final judgment and decree, submit it to counsel for defendant KCATA for approval as to form, and present it to the Court for our consideration.

Counsel are advised that, consistent with our usual practice, we shall stay the execution of our final judgment and decree for a reasonable period of time. Defendant may seek a further stay of execution in the Court of Appeals. See *Kansas City Royals Baseball Corp. v. Major League Baseball Ass'n*, 409 F. Supp. at 262-71 (W.D. Mo.), *aff'd*, 532 F.2d 615 (8th Cir. 1976).

Consideration of any Rule 62 application for a stay in this Court, of course, will be considered in light of the new rule of decision stated by the Court of Appeals for the Eighth Circuit in *Fennel v. Butler* and *Smith v. City of St. Paul*, Nos. 77-1782 and 77-1822 (8th Cir. Feb. 6, 1978). It is further

ORDERED (4) that if counsel agree that a conference with the Court would be helpful to assist counsel in agreeing upon further proceedings leading to the formulation of the final judgment and decree and to provide for prompt and orderly consideration of this case in the Court of

Appeals for the Eighth Circuit, counsel shall so advise one of the Court's law clerks in order that a conference may be scheduled.

/s/ John W. Oliver  
Chief Judge

Kansas City, Missouri

February 28, 1978

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 78-1255

Division 1287, Amalgamated Transit Union, AFL-CIO,  
Appellee,

v.

Kansas City Area Transportation Authority,  
Appellant.

Appeal from the United States District Court for the Western District of Missouri.

Submitted: June 15, 1978

Filed: August 21, 1978

Before STEPHENSON, Circuit Judge, INGRAHAM, Senior Circuit Judge,\* and HENLEY, Circuit Judge.

HENLEY, Circuit Judge.

This is an action for declaratory and injunctive relief brought in the United States District Court for the Western District of Missouri (The Honorable John W. Oliver, District Judge) by Division 1287, Amalgamated Transit Union (Union) against the Kansas City Area Transportation Authority (Authority), which is a public agency that provides mass urban transportation in the general metropolitan area that includes the Cities of Kansas City, Missouri and Kan-

\*The Honorable Joe M. Ingraham, United States Senior Circuit Judge for the Fifth Circuit, sitting by designation.

sas City, Kansas. The Authority was formed in 1967 as a result of a congressionally approved interstate compact between Missouri and Kansas and has received federal financial assistance running into many millions of dollars under the terms of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1601 *et seq.* (the Act).

The suit was filed to compel the Authority to engage in what is known as interest arbitration<sup>1</sup> to settle the terms and conditions of a collective bargaining agreement to take the place of one that expired on November 14, 1977.

The Union contends that it is entitled to interest arbitration by the terms of § 13(c) of the Act, 49 U.S.C. § 1609(c), by the terms of agreements entered into between the Union and the Authority as required by § 13(c) (§ 13(c) agreements), and by the grant contracts that have been entered into between the Authority and the government from time to time since 1968 which contracts have incorporated by reference the prevailing § 13(c) agreements. The Union takes the position that the suit arises under the Act, that the amount in controversy is in excess of \$10,000.00, exclusive of interest and costs, and that federal jurisdiction existed in the district court by virtue of 28 U.S.C. § 1331(a).

The Authority contends that the district court lacked subject matter jurisdiction and that in any event the Union was not entitled to the relief that it sought.

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1. Interest arbitration, which is sometimes called contract arbitration or quasi-legislative arbitration, is the arbitration that may be required when an employer and the collective bargaining agent of employees come to an impasse with respect to the terms and conditions of a new collective bargaining agreement. It differs from grievance arbitration which may be required when disputes arise under an existing collective bargaining agreement.

The case was submitted to the district court largely on stipulations of fact. Judge Oliver filed detailed findings of fact, conclusions of law and comments. He concluded that he had jurisdiction and that the Union was entitled to prevail. An appropriate decree having been entered, this appeal followed.

## I

The Union represents persons employed in certain capacities by private transit companies and public transportation agencies all over the United States. The record indicates that the Union is a strong believer in the proposition that labor disputes in the urban transportation industry should be settled by arbitration, including interest arbitration, rather than by strikes or lockouts.

As is well known, the urban mass transit industry in this country has been in a deteriorating condition for a long period of time. By 1964, and indeed earlier, Congress had concluded that many private companies would have to be taken over by public agencies, and that federal funds would have to be made available to those agencies in order to permit them to effect the take-overs. The result of that determination was the statute involved in this case.

The Act authorizes grants or loans of federal funds to state or local public authorities to enable them to acquire private transit companies. Employees of those companies will presumably become employees of the public agencies, and when it passed the Act Congress was concerned with the economic risks that such employees might incur as a result of the take-overs. Those risks might include loss of collective bargaining rights, loss of the right to strike, and loss of pension and retirement benefits. Section 13(c) of the Act is designed to protect, at least in large mea-

sure, the rights and interests of such employees from such risks.

In substance, § 13(c) provides that as a condition to a federal grant or loan the public agency applying for the same must enter into a protective agreement with the employees of the company to be taken over or with the collective bargaining agent of those employees. The agreement must be approved by the Secretary of Labor, and when approved it becomes a part of the grant contract between the agency and the government.

A § 13(c) agreement must preserve the rights of employees existing at the time of the public take-over, must preserve collective bargaining rights, and must protect employees from the worsening of their conditions of employment. The protection that must be provided against worsening of employment conditions must be at least equal to the protection that is afforded by 49 U.S.C. § 5(2)(f) to employees of rail carriers subject to the jurisdiction of the Interstate Commerce Commission who may be adversely affected by combinations or mergers of railroads.

## II

For many years prior to the Authority's establishment and take-over of mass transportation in the Kansas City area, patrons of mass transportation services relied principally on Kansas City Transit Company and on nine much smaller companies.

The employees of Kansas City Transit Company (Transit) were covered by the National Labor Relations Act, and the Union was their bargaining representative. The collective bargaining agreements that were in force between the Union and Transit from time to time contained no-strike clauses and also provided a procedure whereby

the parties could agree to continue bargaining after the expiration of a contract and to submit to binding arbitration any contract terms with respect to which they found themselves unable to agree.

The last of the agreements between the Union and Transit was executed on December 6, 1967 and covered an initial period between November 1, 1967 and October 31, 1968. It was automatically to be renewed from year to year thereafter unless the Union or Transit gave notice of termination not less than sixty days from the anniversary date of the contract. If a notice of termination was not given within that period or was withdrawn before the termination of the contract, a new contract was to be negotiated between the parties and terms on which they could not agree would be settled by interest arbitration.

Having been duly formed, the Authority in 1968 applied successfully to the government for a multi-million dollar grant to enable it to take over Transit and the smaller companies, to buy new busses, and to improve transit services in the Kansas City area. As required by the Act, a § 13(c) agreement was worked out between the Authority and the Union, was approved by the Secretary of Labor, and became a part of the grant contract between the Authority and the government.

The Authority took over urban transit operations in the Kansas City area in 1969, and since that time it has applied for and obtained numerous additional large grants of federal funds. In connection with the new grants new § 13(c) agreements have been entered into or it has been agreed that an existing agreement would be applicable to the new grant.

The Authority and the Union have entered into a number of collective bargaining agreements. At times the

parties have not been able to agree as to the terms of a new agreement, and their disputes have been resolved by interest arbitration.

The most recent collective bargaining agreement between the Authority and the Union was executed in March, 1974 but was back-dated to November 1, 1973. The contract was to continue in force from year to year unless one of the parties gave written notice of termination not less than sixty days prior to the anniversary date of the contract.

By the fall of 1977 a number of differences between the Authority and the Union had arisen and on September 16, 1977 the Authority gave notice to the Union that the existing agreement would be terminated. The Union promptly demanded interest arbitration, and this suit was filed when the Authority refused to submit to arbitration as to the terms and conditions of a new contract.

### III

We address ourselves, first, to the question of whether the district court had subject matter jurisdiction of the complaint. The position of the Authority is that this is simply a suit on a contract and does not arise under the Constitution or laws of the United States. The defendant also contends that there is an absence of the amount in controversy that is requisite in order to confer jurisdiction under 28 U.S.C. § 1331 (a).

As to jurisdictional amount, the district court found that the evidence was insufficient to establish "to a legal certainty" that the amount in controversy was not in excess of \$10,000.00, exclusive of interest and costs, as to each employee of the Authority, and the district court also found that the Union's financial interest in the case exceeded the jurisdictional minimum. On this question it is

sufficient to say that we agree with the district court. *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 346-48 (1977); *Warth v. Seldin*, 422 U.S. 490, 511 (1975); *Gibbs v. Buck*, 307 U.S. 66, 72-76 (1939); *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-90 (1938); *Local Div. 519, Amalgamated Transit Union v. LaCrosse Municipal Transit Utility and the City of LaCrosse, Wisconsin*, 445 F.Supp. 798, 809-10 (W.D. Wis. 1978), appeal pending. Cf. *Zahn v. International Paper Co.*, 414 U.S. 291 (1973); *Snyder v. Harris*, 394 U.S. 332 (1969); *Brotherhood of Railroad Trainmen v. Templeton*, 181 F.2d 527 (8th Cir.), cert. denied, 340 U.S. 823 (1950); and *Montgomery Ward & Co. v. Langer*, 168 F.2d 182 (8th Cir. 1948).

The question of whether the case is one that "arises under" the laws of the United States is a more troublesome one, and one that has not been answered as yet by any federal appellate court. The district courts are divided on the question. The majority of those courts have held that subject matter jurisdiction does not exist.<sup>2</sup> However, in

2. See *Metropolitan Atlanta Rapid Transit Authority v. Local Division 732, Amalgamated Transit Union* (N.D. Ga. 1973); *Local Div. No. 714, Amalgamated Transit Union v. Greater Portland Transit District* (D. Me. 1978); *Local Div. 1285, Amalgamated Transit Union v. Jackson Transit Authority* (W.D. Tenn. 1977-78). Appeals are now pending in the Portland, Maine case and in the Jackson, Tennessee case.

Another case that is of interest here is *Div. 580, Amalgamated Transit Union v. Central New York Regional Transportation Authority*, N.D. N.Y. No. 77-CV-45. In that case the Union sought to compel interest arbitration and moved for a preliminary injunction; the defendant resisted that motion but did not immediately raise any jurisdictional question. The motion was denied by the district court, and the Union appealed. The action of the district court was upheld by the Court of Appeals for the Second Circuit without any cognizance being taken of a possible jurisdictional question. *Div. 580, Amalgamated Transit Union v. Central New York Regional Transportation Authority*, 556 F.2d 659 (2d

(Continued on following page)

*Local Div. 519, Amalgamated Transit Union v. LaCrosse Municipal Transit Utility and the City of LaCrosse, Wisconsin, supra*, 445 F.Supp. at 804-09, District Judge Doyle of Wisconsin held that a case involving a claim of a breach of a § 13(c) agreement is a case that arises under the laws of the United States. As far as jurisdiction is concerned, Judge Oliver's holding in this case is expressly based on the opinion of Judge Doyle in *Local Div. 519*.<sup>3</sup>

The question of whether a particular case is one that "arises under" the Constitution or laws of the United States is not always an easy one to answer. 13 WRIGHT, MILLER & COOPER, *FEDERAL PRACTICE & PROCEDURE*, § 3562, pp. 397-414. The question is entirely separate and distinct from the question of whether the plaintiff's complaint states a claim upon which relief can be granted and the question of whether there is any merit to the claim. *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*,

Footnote continued—

Cir. 1977). On remand the defendant raised the question of subject matter jurisdiction, and the district court held that jurisdiction did not exist. There was another appeal by the Union. While that appeal was pending, the Union and the Transportation Authority settled their differences and executed a new collective bargaining agreement. The court of appeals held that this development rendered the controversy moot and declined to pass on the jurisdictional question. *Div. 580, Amalgamated Transit Union v. Central New York Regional Transportation Authority*, ..... F.2d ..... (2d Cir. No. 77-7546 June 7, 1978).

3. An appeal is pending in that case. We note, however, that on February 14, 1978 a panel of the Court of Appeals for the Seventh Circuit refused to grant to the defendant utility a stay of the preliminary injunction that Judge Doyle had granted. The panel said "that the defendants-appellants must now proceed to arbitration does not constitute irreparable harm so as to justify this court in staying the preliminary injunction. That preliminary injunction was issued after careful consideration by the district court." Judge Oliver decided this case on February 28, 1978, and he mentions the Seventh Circuit's order of February 14 which had not been entered when this case was briefed in the district court.

341 U.S. 246, 249 (1951); *Bell v. Hood*, 327 U.S. 678, 682-83 (1946); *Gully v. First Nat'l Bank*, 299 U.S. 109, 112-14 (1936); *Norton v. Blaylock*, 285 F.Supp. 659, 661-62 (E.D. Ark. 1968), *aff'd*, 409 F.2d 772 (8th Cir. 1969).

In *Gully v. First Nat'l Bank, supra*, 299 U.S. at 112-13, the Court said:

How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. *Starin v. New York*, 115 U.S. 248, 257; *First National Bank v. Williams*, 252 U.S. 504, 512. The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. *Ibid*; *King County v. Seattle School District*, 263 U.S. 361, 363, 364. A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto (*New Orleans v. Benjamin*, 153 U.S. 411, 424; *Defiance Water Co. v. Defiance*, 191 U.S. 184, 191; *Joy v. St. Louis*, 201 U.S. 332; *Denver v. New York Trust Co.*, 229 U.S. 123, 133), and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal. *Tennessee v. Union & Planters Bank*, 152 U.S. 454; *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149; *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25; *Taylor v. Anderson*, 234 U.S. 74. Indeed, the complaint itself will not avail as a basis of jurisdiction in so far as it goes beyond a statement of the plaintiff's cause of action and anticipates or replies to a probable defense.

*Devine v. Los Angeles*, 202 U.S. 313, 334; *The Fair v. Kohler Die & Specialty Co.*, *supra*.

And the Court cited with approval the earlier case of *Shulthis v. McDougal*, 225 U.S. 561, 569 (1912), wherein it was said:

A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends.

More recently, this court held that if a case is to be considered as one arising under federal law, "the federal right relied upon for jurisdiction must be a paramount and not a collateral issue." *Baker v. Riss & Co.*, 444 F.2d 257, 259 (8th Cir. 1971).

And, of course, in order to confer federal question jurisdiction on a district court the federal question raised must be substantial and not plainly frivolous. *Hagans v. Lavine*, 415 U.S. 528, 536-38 (1974); 13 WRIGHT, MILLER & COOPER, *supra*, § 3564, pp. 426-30.

We have mentioned already the purpose of the Act and the concern of Congress with respect to the economic interests of employees of private transit companies that were to be taken over by public agencies. Section 13(c) of the Act does not simply direct a public agency seeking a federal grant and a labor union representing transit employees to sit down at the bargaining table and enter into any kind of a contract that is mutually agreeable to them. As has been seen, § 13(c) prescribes at least minimum standards for employee protection, requires that the agree-

ments in question be approved by the Secretary of Labor, and provides that the agreements become part of the contracts between the public agencies and the government itself.

Although the question is not free from doubt, we now hold that a controversy between a public transit agency and a labor union involving a claim of breach of a § 13(c) agreement is a controversy that arises under the laws of the United States. See *Ass'n of Machinists v. Central Airlines*, 372 U.S. 682 (1963); *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen*, 323 U.S. 210 (1944); *Burlington Northern, Inc. v. American Railway Super-visors Ass'n*, 503 F.2d 58 (7th Cir. 1974), *cert. denied*, 421 U.S. 975 (1975); *Brotherhood of Locomotive Engineers v. Chicago & North Western Ry. Co.*, 314 F.2d 424 (8th Cir. 1963), *aff'g Chicago & North Western Ry. Co. v. Brotherhood of Locomotive Engineers*, 202 F.Supp. 277 (S.D. Ia. 1962).

#### IV

On the merits the Authority makes two arguments for reversal: first, that as an alternative to interest arbitration the parties had a right to terminate their contractual relationship. Second, that an agreement by the Authority to binding interest arbitration would be illegal as an impermissible delegation of power by a public body. We reject both arguments.

#### A

The controversy between the parties actually involves three separate and distinct contracts: (1) the underlying collective bargaining agreement between the Authority and the Union; (2) the § 13(c) agreement between the Authority and the Union; and (3) the grant contract between the

Authority and the government. This suit is based on the § 13(c) contract and not on the collective bargaining agreement or on the contract between the Authority and the government.

The first § 13(c) contract between the Union and the Authority was entered into in 1968; however, that contract does not differ substantially from the one that was entered into in 1973 and which has been extended to grants that the Authority has received from the government since that time. Section 24 of the 1973 § 13(c) agreement is as follows:

In the event the Project is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the applicant for federal funds, provided, however, that this agreement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties hereto, in accordance with its terms; nor shall the collective bargaining agreement between the Union and the operator of the transit system merge into this agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

The termination and arbitration provisions of the collective bargaining agreement between the Union and the Authority that was executed in 1974 appear as §§ 4 and 9 of that agreement, and those sections do not differ substantially, if at all, from comparable provisions appearing in the last collective bargaining agreement that the Union and Transit entered into in 1967. It appears to us that under the 1974 agreement either side could have avoided interest arbitration by giving a sixty day notice of termina-

tion. As has been pointed out, however, this suit is based on the § 13(c) agreement, and the rights of the parties must be measured by that agreement which is not identical in terms to the collective bargaining agreement. The controlling provision of the § 13(c) agreement is § 17 of that agreement which, insofar as here pertinent, is as follows:

In the case of any labor dispute (except as defined in paragraph (11) hereof) where collective bargaining does not result in agreement after all reasonable efforts to agree in good faith, the same may be submitted at the written request of either party to a board of arbitration composed of three (3) persons as hereinafter provided, one to be chosen by the Authority, one to be chosen by the Union, and the two thus selected to select a third disinterested arbitrator; the finding of the majority of said board of arbitration shall be final and binding on the parties hereto; all contract conditions shall remain undisturbed and there shall be no lockouts, strikes, walk-outs or interference with or interruption of service during the arbitration proceedings.

Each party shall appoint its arbitrator within five (5) days after notice of submission to arbitration has been given. If the two arbitrators selected by the parties are unable to agree upon the selection of the third arbitrator within five (5) days from the date of appointment of the second-named arbitrator, then either arbitrator may request the American Arbitration Association to furnish a list of seven (7) members of the National Academy of Arbitrators from which the elimination, and thereafter each shall, in that order, pointed by the parties shall, within five (5) days after the receipt of such list determine by lot the order of elimination, and thereafter each shall, in that order,

alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. In each instance, the foregoing time limits are exclusive of Saturday, Sunday and holidays. Such time limits may be extended by mutual agreement of the parties in writing.

\* \* \*

The term 'labor dispute' shall be broadly construed and shall include any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements, the interpretation of application of such agreements, the adjustments of grievances, any claim, difference, or controversy arising out of or by virtue of any of the provisions of this agreement for the protection of employees covered by this agreement affected by the Project.

The arbitration board shall make every reasonable effort to render its decision within thirty (30) days from the date of the completion of the hearings in the proceedings, or within such longer period as the parties to the proceedings may mutually agree upon in writing. The decision of the arbitration board shall be in writing, signed by a majority of the members thereof, and original counterparts thereof shall be filed with the Authority and the Union.

Nothing in this paragraph (17) shall be construed to enlarge or limit the right of either party to utilize, upon the expiration of any collective bargaining agreement, any economic measures that are consistent or not in conflict with applicable law.

In view of that language, we are of the opinion that the contract required interest arbitration at the request of either party upon the expiration of a collective bargaining agreement. Our conclusion is bolstered by the history of negotiations between the parties that is revealed by the record, and by the fact that on two occasions prior to 1977 contract differences between the Authority and the Union were in fact resolved by interest arbitration rather than by strikes or other economic measures.

## B

In the district court the Authority contended broadly that an agreement to arbitrate the terms of a future collective bargaining agreement will not be enforced by the courts. Judge Oliver properly rejected that contention. See *Winston-Salem Printing Pressmen & Assistants' Union v. Piedmont Publishing Co. of Winston-Salem*, 393 F.2d 221 (4th Cir. 1968); *Greater Kansas City Laborers District Council v. Builders Ass'n of Kansas City*, 217 F.Supp. 1 (W.D. Mo. 1963), *aff'd*, 326 F.2d 867 (8th Cir.), *cert. denied*, 377 U.S. 917 (1964).

The Authority contends here that any obligation on its part to engage in binding interest arbitration would amount to an unlawful delegation of the powers and authority that have been conferred upon it as a public body. We do not think that this argument can be sustained in the context of the present case.

As is well known, the federal policy in favor of arbitration as a means of settling labor disputes is a very strong one. In addition to the cases last cited, see the familiar "*Steel Workers Trilogy*" of cases beginning with *United Steel Workers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); see also *General Electric Co. v. Local 205*,

*United Electrical, Radio & Machine Workers of America*, 353 U.S. 547 (1957), and *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957).

That policy would appear to be particularly applicable in the vital area of urban mass transit where strikes of workers are in the highest degree undesirable from the standpoint of the public.<sup>4</sup>

We recognize that under the laws of some states employees of public agencies are not accorded collective bargaining rights nor do they enjoy the benefits of such bargaining, including arbitration. We think, however, that when a state or a combination of states forms a public transit agency for the express purpose of obtaining federal money to enable it to take over the business of a private transit company, and where the agency in order to obtain the money enters into a § 13(c) agreement that calls for interest arbitration, the obligation to arbitrate is binding on the agency, regardless of general state law or policy.

We agree with Judge Doyle in *Local 519*, *supra*, 445 F. Supp. at 811, that Congress intended that the rights of transit employees be protected by contracts, and that it intended that the contracts entered into by the parties and approved by the Secretary of Labor would be enforceable, and that it would be fatuous to hold otherwise.

The judgment of the district court is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,  
EIGHTH CIRCUIT.

4. In this connection we call attention to the findings of Congress as to the importance of mass urban transportation that are set out in 49 U.S.C. §§ 1601, 1601a and 1601b.

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 78-1255

September Term, 1977

Division 1287, Amalgamated Transit Union, AFL-CIO,  
Appellee,

vs.

Kansas City Area Transportation Authority,  
Appellant.

JUDGMENT

(Filed August 21, 1978)

Appeal from the United States District Court for the Western District of Missouri.

This Cause came on to be heard on the record from the United States District Court for the Western District of Missouri and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

August 21, 1978

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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September Term, 1978

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No. 78-1255

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Division 1287, Amalgamated Transit Union, AFL-CIO,  
Appellee,

vs.

Kansas City Area Transportation Authority,  
Appellant.

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Appeal from the United States District Court  
for the Western District of Missouri

The Court having considered petition for rehearing en banc filed by counsel for appellant and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

September 21, 1978

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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September Term, 1978

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No. 78-1255

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Division 1287, Amalgamated Transit Union, AFL-CIO,  
Appellee,

vs.

Kansas City Area Transportation Authority,  
Appellant.

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Appeal from the United States District Court  
for the Western District of Missouri.

On the Court's own motion it is now here ordered that the following changes be made in the slip opinion filed in this cause on August 21, 1978:

(1) The date that appears on the last line of the first full paragraph on page 2 of the slip opinion is changed from October 31, 1977 to November 14, 1977.

(2) Footnote 4 on page 13 of the slip opinion is deleted.

(3) Footnote 5 on page 16 of the slip opinion now becomes Footnote 4.

September 21, 1978

**49 U.S.C. Sec. 1609(c)**  
**78 Stat. 307**

(c) It shall be a condition of any assistance under section 3 of this Act [§1602 of this title] that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended [§5(2)(f) of this title]. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

**Sec. 238.100, RSMo.**  
**K.S.A. Sec. 12-2534**  
**82 Stat. 338**

*Additional powers and duties of commissioners.*—In further effectuation of that certain compact between the states of Missouri and Kansas heretofore made and entered into on December 28, 1965, the Kansas City area transportation authority of the Kansas City area transportation district, created by and under the aforesaid compact, is authorized to exercise the following powers in addition to those heretofore expressly authorized by the aforesaid compact:

(1) To make all appointments and employ all its officers, agents and employees, determine their qualifications and duties and fix their compensation;

(2) To deal with and enter into written contracts with the employees of the authority through accredited representatives of such employees or representatives of any labor organization authorized to act for such employees, concerning wages, salaries, hours, working conditions, pension or retirement provisions, and insurance benefits;

(3) To provide for the retirement and pensioning of its officers and employees and the widows and children of the deceased officers and employees, and to provide for paying benefits upon disability or death of its officers and employees and to make payments from its funds to provide for said retirements, pensions and death or disability benefits.